



# BALANCING COPYRIGHT PROTECTION AND FREEDOM OF EXPRESSION: CJEU RULINGS C-516/17 AND C-469/17 IN LIGHT OF DIRECTIVE 2001/29

DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 22 May 2001  
on the harmonisation of certain aspects of copyright and related rights in the information society

# Background: The Infosoc Directive



Adopted in 2001 to harmonize aspects of copyright in the information society



Aims to balance **intellectual property** protection with public interest → «*fair balance*»

- Article 2 → Reproduction right
- Article 3 → Right of communication to the public of works and right of making available to the public other subject-matter
- Article 4 → Distribution right



## ARTICLE 5 → Exceptions and limitations

- ❖ Par.3 – (c) **reproduction by the press, [...], or use of works [...] in connection with the reporting of current events, to the extent justified by the informatory purpose** and as long as the source, **including the author's name**, is indicated, unless this turns out to be impossible;
- ❖ Par.3 – (d) **quotations** for purposes such as **criticism or review**, provided that they relate to a work [...] which has **already been lawfully made available** to the public, that, unless this turns out to be impossible, the source, **including the author's name**, is indicated, and that their use is in accordance with fair practice, and to the **extent required** by the specific purpose;

# Facts

## CASE C-516/17: SPIEGEL ONLINE GMBH V. VOLKER BECK

- **1988** – Mr Beck's manuscript on criminal policy concerning sexual offences against minors is published as an article in a book. **During publication the publisher changes the title and shortens one sentence.** On **May 5, 1988**, Mr Beck **objects to these editorial changes**, asking the publisher to acknowledge them explicitly when the book is distributed.
- **1993** – Mr Beck **publicly distances** himself from the content of the article.
- **1994** – Mr Beck becomes a member of the German Bundestag.
- **September 17, 2013** – While a candidate in parliamentary elections, Mr Beck's manuscript is rediscovered in archives and made available to him.
- **September 18, 2013** – Mr Beck provides various newspaper editors with the manuscript to demonstrate that the publisher had amended it. Instead of consenting to its publication by others, **he publishes the manuscript on his own website**, attaching a **dissociative statement** ("I dissociate myself from this contribution. Volker Beck") to each page. The version of the article in the book also carries a notice that it is unauthorized and has been distorted by editorial changes.
- **September 20, 2013** – Spiegel Online **publishes an article** asserting that the central statement in Mr Beck's manuscript was not altered by the publisher and that he misled the public. In addition, Spiegel Online **makes available hyperlinks for downloading the original** versions of both the manuscript and the book article.
- **Thereafter** – Mr Beck initiates **legal proceedings** before the Regional Court in Germany, challenging Spiegel Online's publication of the full texts. The Regional Court upholds his action, and after dismissing his appeal, Spiegel Online brings an appeal on a point of law before the referring court.
- **July 27, 2017** – The Bundesgerichtshof (Federal Court of Justice, Germany) decides to stay the proceedings and refers several questions regarding the interpretation of Directive 2001/29 to the Court of Justice of the European Union (CJEU).
- **August 25, 2017** – The CJEU receives the request for a preliminary ruling.

## C-469/17: FUNKE MEDIEN NRW GMBH V. BUNDESREPUBLIK DEUTSCHLAND

- **September 1, 2001** – The start date for the period covered by the military status reports (UdPs) produced by the German Government.
- **September 27, 2012** – Funke Medien NRW GmbH **formally applies** for access to all UdPs produced between September 1, 2001, and September 26, 2012. **The authorities deny** the request, citing potential risks to security-sensitive interests.
- **Shortly after September 2012** – Despite the refusal, Funke Medien obtains a substantial number of these classified UdPs by unknown means and **publishes them online as the "Afghanistan papers"**, presenting scanned pages along with an introductory note, links, and a space for comments.
- Subsequently – The Federal Republic of Germany initiates an **action for an injunction** against Funke Medien for allegedly **infringing copyright**. The Regional Court in Cologne upholds the injunction, and Funke Medien's appeal is later dismissed by the Higher Regional Court in Cologne.
- **June 1, 2017** – The Bundesgerichtshof (Federal Court of Justice of Germany) stays the proceedings and refers several questions on the interpretation of Directive 2001/29 to the Court of Justice of the European Union (CJEU).
- **August 4, 2017** – The CJEU receives the **request for a preliminary ruling**.

# Legal Issues

**CASE C-516/17: SPIEGEL ONLINE GMBH v. VOLKER BECK**

In determining **when a work has already been lawfully made available** to the public, should the focus be on whether that work in its specific form was published previously with the author's consent?

**C-469/17: FUNKE MEDIEN NRW GMBH v. BUNDESREPUBLIK DEUTSCHLAND**

**Do these reports qualify as 'works' and can they benefit from the exceptions?**



Does Article 5(3)(c) and (d) **allow discretion** in transposing these exceptions into national law?



Can the **fundamental rights** of freedom of information or freedom of the media **justify exceptions** or limitations to the exclusive rights of authors **beyond the exceptions or limitations provided** for in Article 5 of the Directive 2001/29?

# Legal Reasoning and Implications

## CASE C-516/17: SPIEGEL ONLINE GMBH V. VOLKER BECK

“[...] publication of those documents on Mr Beck’s website was accompanied by a statement of dissociation by him from the content of those documents across every page thereof. Thus, at the time of that publication, **the same documents were lawfully made available to the public only in so far as they were accompanied by those statements of dissociation**”

## C-469/17: FUNKE MEDIEN NRW GMBH V. BUNDESREPUBLIK DEUTSCHLAND

“[...] only something which is the expression of the **author’s own intellectual creation** may be classified as a ‘work’ within the meaning of Directive 2001/29 [...]”

“In order for an intellectual creation to be regarded as an author’s own **it must reflect the author’s personality** [...]”

“[...] the author was able to make **free and creative choices** capable of conveying to the reader the originality of the subject matter at issue [...]”



Member States **are permitted some latitude** in applying these exceptions, which allows them to implement them in a way that reflects local legal traditions and the need to safeguard fundamental rights, **as long as they remain within the limits set by the directive and the Charter** of Fundamental Right.



«**Freedom of information and freedom of the press, [...], are not capable of justifying, beyond** the exceptions or limitations provided for in Article 5(2) and (3) of Directive 2001/29, **a derogation from the author’s exclusive rights [...]**»

# Relevance of the rulings



## CLARIFYING COPYRIGHT BOUNDARIES

- CJEU affirms that copyright applies only to works reflecting **free and creative choices** (C-469/17).
- Ensures factual or purely informative content remains accessible without undue copyright restrictions.



## FAIR BALANCE IN IP LAW



- Reinforces the principle that **copyright protection must not come at the expense of fundamental rights** (freedom of expression, press, and information).
- Member States **have limited but necessary discretion** in applying exceptions under Article 5(3) of the Infosoc Directive (C-516/17).



## IMPACT ON DIGITAL & MEDIA LANDSCAPES

- Ensures that copyright law does **not stifle democratic discourse** or public access to information.

*These rulings reinforce that copyright must be a tool for innovation and creativity, not a barrier to access and democratic discourse. Their impact extends beyond traditional media, influencing how intellectual property rights will be interpreted in the digital age.*



THANK YOU FOR THE  
ATTENTION